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8/8/2012 10:30 AM 2:10  
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CLERK'S OFFICE  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
SAN BERNARDINO  
SACV12-00943-DOC-RNBx

9 Attorneys for Defendants and Counterclaimants,  
10 MGA ENTERTAINMENT, INC. and ISAAC LARIAN

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA - Southern Division

13  
14 NATIONAL UNION FIRE  
15 INSURANCE COMPANY OF  
16 PITTSBURGH, PA, LEXINGTON  
17 INSURANCE COMPANY,  
18 CHARTIS SPECIALTY  
19 INSURANCE COMPANY  
20 (FORMERLY AMERICAN  
21 INTERNATIONAL SPECIALTY  
22 LINES INSURANCE), AND CRUM  
23 & FORSTER SPECIALTY  
24 INSURANCE COMPANY

Case No.: SACV12-00943 DOC  
(RNBx)

DEFENDANTS', MGA  
ENTERTAINMENT, INC. AND  
ISAAC LARIAN, ANSWER AND  
COUNTERCLAIM FOR:

- 25 1. BREACH OF THE IMPLIED  
26 COVENANT OF GOOD FAITH  
AND FAIR DEALING
- 27 2. DECLARATORY RELIEF

28 vs.

MGA ENTERTAINMENT, INC., and  
ISAAC LARIAN.

Defendants

1 MGA ENTERTAINMENT, INC. and  
2 ISAAC LARIAN, an individual.

3 Counterclaimants,

4 vs.  
5

6 NATIONAL UNION FIRE  
7 INSURANCE COMPANY OF  
8 PITTSBURGH, PA, LEXINGTON  
9 INSURANCE COMPANY, CHARTIS  
SPECIALTY INSURANCE COMPANY  
10 (FORMERLY AMERICAN  
INTERNATIONAL SPECIALTY  
11 LINES INSURANCE), AND CRUM &  
FORSTER SPECIALTY INSURANCE  
12 COMPANY

13 Counterdefendants.  
14

15  
16 Defendants, MGA Entertainment, Inc. and Isaac Larian (collectively  
17 "MGA") answer the complaint for declaratory relief of Plaintiffs as follows:

- 18 1. Answering paragraph 1 of the complaint, MGA admits all allegations  
therein.
- 20 2. Answering paragraph 2 of the complaint, MGA admits all allegations  
therein.
- 22 3. Answering paragraph 3 of the complaint, MGA admits all allegations  
therein.
- 24 4. Answering paragraph 4 of the complaint, MGA admits all allegations  
therein.
- 26 5. Answering paragraph 5 of the complaint, MGA admits all allegations  
therein.

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1           6. Answering paragraph 6 of the complaint, MGA admits all allegations  
2 therein.

3           7. Answering paragraph 7 of the complaint, MGA admits all allegations  
4 therein.

5           8. Answering paragraph 8 of the complaint, MGA admits all allegations  
6 therein.

7           9. Answering paragraph 9 of the complaint, MGA admits all allegations  
8 therein.

9           10. Answering paragraph 10 of the complaint, MGA admits all allegations  
10 therein.

11          11. Answering paragraph 11 of the complaint, MGA admits only that the  
12 quoted language is contained within the “Lexington Policies,” but denies all other  
13 allegations contained therein.

14          12. Answering paragraph 12 of the complaint, MGA admits only that the  
15 quoted language is contained within the “Lexington Policies,” but denies all other  
16 allegations contained therein.

17          13. Answering paragraph 13 of the complaint, MGA admits only that the  
18 quoted language is contained within the “Lexington Policies,” but denies all other  
19 allegations contained therein.

20          14. Answering paragraph 14 of the complaint, MGA denies the  
21 allegations contained therein.

22          15. Answering paragraph 15 of the complaint, MGA admits all allegations  
23 contained therein.

24          16. Answering paragraph 16 of the complaint, MGA admits only that the  
25 quoted language is contained within the “2001 Policy,” but denies all other  
26 allegations contained therein.

27

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1           17. Answering paragraph 17 of the complaint, MGA admits only that the  
2 quoted language is contained within the “2001 Policy,” but denies all other  
3 allegations contained therein.

4           18. Answering paragraph 18 of the complaint, MGA admits only that the  
5 quoted language is contained within the “2001 Policy,” but denies all other  
6 allegations contained therein.

7           19. Answering paragraph 19 of the complaint, MGA denies the  
8 allegations contained therein.

9           20. Answering paragraph 20 of the complaint, MGA admits all allegations  
10 contained therein.

11          21. Answering paragraph 21 of the complaint, MGA admits only that the  
12 quoted language is contained within the “2002 Policy,” but denies all other  
13 allegations contained therein.

14          22. Answering paragraph 22 of the complaint, MGA admits only that the  
15 quoted language is contained within the “2002 Policy,” but denies all other  
16 allegations contained therein.

17          23. Answering paragraph 23 of the complaint, MGA admits only that the  
18 quoted language is contained within the “2002 Policy,” but denies all other  
19 allegations contained therein.

20          24. Answering paragraph 24 of the complaint, MGA denies the  
21 allegations contained therein.

22          25. Answering paragraph 25 of the complaint, MGA admits that the  
23 “2001 Policy, the 2002 Policy and the Lexington Policies” as defined by the  
24 complaint are referred to in the complaint as “Member Companies’ Policies.”

25          26. Answering paragraph 26 of the complaint, MGA admits the  
26 allegations contained therein.

27

28



1           27. Answering paragraph 27 of the complaint, MGA admits only that the  
2 quoted language is contained within the “Crum & Forster Policies,” but denies all  
3 other allegations contained therein.

4           28. Answering paragraph 28 of the complaint, MGA admits only that the  
5 quoted language is contained within the “Crum & Forster Policies,” but denies all  
6 other allegations contained therein.

7           29. Answering paragraph 29 of the complaint, MGA admits only that the  
8 quoted language is contained within the “Crum & Forster Policies,” but denies all  
9 other allegations contained therein.

10          30. Answering paragraph 30 of the complaint, MGA denies the  
11 allegations contained therein.

12          31. Answering paragraph 31 of the complaint, MGA admits that Mattel  
13 made such claims, but denies each and every claim or allegation made by Mattel in  
14 the “Mattel Litigation.”

15          32. Answering paragraph 32 of the complaint, MGA admits that Mattel  
16 made such claims, but denies each and every claim or allegation made by Mattel in  
17 the “Mattel Litigation.”

18          33. Answering paragraph 33 of the complaint, MGA admits the  
19 allegations contained therein.

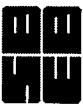
20          34. Answering paragraph 34 of the complaint, MGA admits the  
21 allegations contained therein.

22          35. Answering paragraph 35 of the complaint, MGA admits the  
23 allegations contained therein.

24          36. Answering paragraph 36 of the complaint, MGA admits the  
25 allegations contained therein.

26          37. Answering paragraph 37 of the complaint, MGA admits the  
27 allegations contained therein.

28



1           38. Answering paragraph 38 of the complaint, MGA admits the  
2 allegations contained therein.

3           39. Answering paragraph 39 of the complaint, MGA admits the  
4 allegations contained therein.

5           40. Answering paragraph 40 of the complaint, MGA admits the  
6 allegations contained therein.

7           41. Answering paragraph 41 of the complaint, MGA admits the  
8 allegations contained therein.

9           42. Answering paragraph 42 of the complaint, MGA admits the  
10 allegations contained therein.

11          43. Answering paragraph 43 of the complaint, MGA admits the  
12 allegations contained therein.

13          44. Answering paragraph 44 of the complaint, MGA admits the  
14 allegations contained therein.

15          45. Answering paragraph 45 of the complaint, MGA admits that  
16 Lexington agreed to defend MGA in connection with the Mattel Litigation  
17 pursuant to a letter dated May 15, 2008, but denies that the letter effectuated a “full  
18 reservation of all of Lexington’s rights.”

19          46. Answering paragraph 46 of the complaint, MGA admits that National  
20 Union and Chartis Specialty agreed to participate in the defense of MGA in  
21 connection with the Mattel Litigation pursuant to letters dated July 8 and 9, 2008,  
22 but denies that those letters effectuated “complete reservation[s]” of their rights.

23          47. Answering paragraph 47 of the complaint, MGA admits the  
24 allegations contained therein.

25          48. Answering paragraph 48 of the complaint, MGA admits the  
26 allegations contained therein.

27          49. Answering paragraph 49 of the complaint, MGA admits the  
28 allegations contained therein.

1           50. Answering paragraph 50 of the complaint, MGA admits the  
2 allegations contained therein.

3           51. Answering paragraph 51 of the complaint, MGA admits the  
4 allegations contained therein.

5           52. Answering paragraph 52 of the complaint, MGA denies the  
6 allegations contained therein.

7           53. Answering paragraph 53 of the complaint, MGA admits that it  
8 submitted various invoices to the Member Companies for the defense of Mattel  
9 Litigation and that Crum & Forster and the Member Companies made payments to  
10 MGA for the defense of the Mattel Litigation, but denies all other allegations  
11 contained therein.

12          54. Answering paragraph 54 of the complaint, MGA is without sufficient  
13 knowledge or information to form a belief as to the truth of the allegations  
14 regarding which “certain invoices” are being referred to in this paragraph, and on  
15 that basis denies the allegations contained therein.

16          55. Answering paragraph 55 of the complaint, MGA admits that  
17 paragraphs 1-54 of the complaint are incorporated into the First Cause of Action.

18          56. Answering paragraph 56 of the complaint, MGA admits only that the  
19 Member Companies and Crum & Forster have made payments to MGA in  
20 connection with the Mattel Litigation, but denies all other allegations contained  
21 therein.

22          57. Answering paragraph 57 of the complaint, MGA admits only that it  
23 obtained an award in the Mattel Litigation, but denies all other allegations  
24 contained therein.

25          58. Answering paragraph 58 of the complaint, MGA denies the  
26 allegations contained therein.

27          59. Answering paragraph 59 of the complaint, MGA admits that  
28 paragraph 1 – 54 are incorporated into the Second Cause of Action.

1       60. Answering paragraph 60 of the complaint, MGA admits only that the  
2 Member Companies and Crum & Forster have made payments to MGA in  
3 connection with the Mattel Litigation, but denies all other allegations contained  
4 therein.

5       61. Answering paragraph 61 of the complaint, MGA admits only that it  
6 obtained an award in the Mattel Litigation, but denies all other allegations  
7 contained therein.

8       62. Answering paragraph 62 of the complaint, MGA admits that the  
9 quoted language appears in the Crum & Forster Policies, but denies all other  
10 allegations contained therein.

11       63. Answering paragraph 63 of the complaint, MGA admits only that the  
12 Member Companies and Crum & Forster have made payments to MGA in  
13 connection with the Mattel Litigation, but denies all other allegations contained  
14 therein.

15       64. Answering paragraph 64 of the complaint, MGA denies the  
16 allegations contained therein.

17       65. Answering paragraph 65 of the complaint, MGA denies the  
18 allegations contained therein.

19       66. Answering paragraph 66 of the complaint, MGA admits that  
20 allegations of paragraphs 1-54 are incorporated into the Third Cause of Action.

21       67. Answering paragraph 67 of the complaint, MGA admits only that the  
22 Member Companies and Crum & Forster have made payments to MGA in  
23 connection with the Mattel Litigation, but denies all other allegations contained  
24 therein.

25       68. Answering paragraph 68 of the complaint, MGA denies the  
26 allegations contained therein.

27       69. Answering paragraph 69 of the complaint, MGA admits the  
28 allegations contained therein.



1           70. Answering paragraph 70 of the complaint, MGA denies the  
2 allegations contained therein.

3           71. Answering paragraph 71 of the complaint, MGA denies the  
4 allegations contained therein.

5           72. Answering paragraph 72 of the complaint, MGA admits that the  
6 allegations in paragraphs 1 – 54 are incorporated into the Fourth Cause of Action.

7       73. Answering paragraph 73 of the complaint, MGA admits only that the  
8 Member Companies and Crum & Forster have made payments to MGA in  
9 connection with the Mattel Litigation, but denies all other allegations contained  
10 therein.

11           74. Answering paragraph 74 of the complaint, MGA admits only that the  
12 Plaintiffs asserted claims to reimbursement of amounts paid to MGA and that  
13 MGA disputed those claims, but denies all other allegations contained therein.

14           75. Answering paragraph 75 of the complaint, MGA admits only that  
15       there is an actual controversy between the parties for purposes of the adjudication  
16       of declaratory relief, but denies all other allegations contained therein.

17           76. Answering paragraph 76 of the complaint, MGA denies the  
18 allegations contained therein.

19           77. Answering paragraph 77 of the complaint, MGA admits that the  
20 Plaintiffs demand a jury trial.

78. Answering Plaintiffs' Demand for Relief, MGA denies that the  
Plaintiffs are entitled to any of the relief demanded.

**DEMAND FOR JURY TRIAL**

25 79. MGA hereby demands a jury trial on Plaintiffs' complaint.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

## **(Failure to State Claim)**

1. Plaintiffs have failed to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

#### **(Failure to Join Necessary Parties)**

2. Plaintiffs have failed to join all necessary and/or indispensable parties under Federal Rules of Civil Procedure Rule 19.

### **THIRD AFFIRMATIVE DEFENSE**

### **(Statute of Limitations)**

3. The allegations are barred by the applicable statute of limitations.

## **FOURTH AFFIRMATIVE DEFENSE**

**(Waiver)**

4. The allegations in the complaint are barred because Plaintiffs have intentionally waived their rights under the applicable insurance policies.

## FIFTH AFFIRMATIVE DEFENSE

### **(Estoppe)**

5. The allegations in the complaint are barred under the doctrine of estoppel.

## SIXTH AFFIRMATIVE DEFENSE

### **(Unclean Hands)**

6. The allegations in the complaint are barred and Plaintiffs may not obtain the relief sought under the doctrine of unclean hands.

## **SEVENTH AFFIRMATIVE DEFENSE (Collateral Estoppel)**

3       7. Plaintiffs' are unable to obtain the relief sought under the doctrine of  
4 collateral estoppel.

## **EIGHTH AFFIRMATIVE DEFENSE (Unripe)**

8       8. Plaintiffs' are unable to obtain the relief sought because the matter is  
9 not ripe for adjudication.

## **NINTH AFFIRMATIVE DEFENSE (Common Fund Doctrine)**

2       9. Plaintiffs' are unable to obtain the relief sought because of the  
3 common fund doctrine.

# **TENTH AFFIRMATIVE DEFENSE**

## **(Made Whole Rule)**

17           10. Plaintiffs' are unable to obtain the relief sought because of the Made  
18 Whole Rule.

# **ELEVENTH AFFIRMATIVE DEFENSE**

## **(Superior Equities Rule)**

21           11. Plaintiffs' are unable to obtain the relief sought because of the Rule of  
22 Superior Equities.

## **PRAYER FOR RELIEF**

25      **WHEREFORE**, Defendants pray as follows:

26                   1. That Plaintiffs take nothing by reason of their complaint, that  
27 judgment be rendered in favor of Defendant;

- 1                   2. That Defendant be awarded costs of suit incurred in defense of  
2 this action; and  
3                   3. For such other relief as the Court deems proper.

4  
5 Date: August 8, 2012

SHERNOFF BIDART  
ECHEVERRIA BENTLEY LLP

6  
7 By \_\_\_\_\_  
8

MICHAEL J. BIDART  
RICARDO ECHEVERRIA  
Attorneys for Defendants, MGA  
ENTERTAINMENT, INC. and ISAAC  
LARIAN

9  
10 SHERNOFF BIDART  
11 ECHEVERRIA BENTLEY  
12 LAWYERS FOR INSURANCE POLICYHOLDERS



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## **COUNTERCLAIMS**

MGA Entertainment, Inc. and Isaac Larian (collectively “MGA”), for their counterclaim against National Union Fire Insurance Company Of Pittsburgh, Pa (“National Union”) Lexington Insurance Company (“Lexington”), and Chartis Specialty Insurance Company, formerly known as American International Specialty Lines Insurance Company (“Chartis”)(Chartis, National Union, and Lexington are herein after referred to collectively as “The Member Companies”), and Crum & Forster Specialty Insurance Company, (“C&F”) alleges as follows:

J.

## INTRODUCTION

1. MGA is a toy manufacturer based in Southern California and brings these counterclaims against counterdefendants, The Member Companies and C&F (collectively “Plaintiffs”), for breach of the implied covenant of good faith and fair dealing and declaratory relief. These counterclaims are made in connection with Plaintiffs’ complaint which seeks a determination that the Plaintiffs are entitled to reimbursement from the award in the *Mattel* Litigation. However, the Plaintiffs breached their insurance contracts with MGA and also breached the implied covenant of good faith and fair dealing with MGA. Plaintiffs conduct toward MGA was, and is, wrongful. Accordingly, Plaintiffs are not entitled to the relief sought by their complaint, and MGA is entitled to damages for the harm caused by Plaintiffs’ unreasonable and wrongful conduct.

III.

## **JURISDICTION AND VENUE**

2. This Court has diversity jurisdiction over this action pursuant to 28  
U.S.C. § 1332 because the citizenship of the parties is diverse.

3. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a), (c)-

1 (d).

III.

## THE PARTIES

4       5. Counterclaimant MGA is, and at all relevant times was, a closely held  
5 California Subchapter-S corporation, incorporated and duly existing in California.  
6 MGA is a family-owned toy manufacturer, with its principal place of business in  
7 Van Nuys, California. MGA is the successor in interest to ABC International  
8 Traders, Inc. (“ABC”).

9           6. Counterclaimant Isaac Larian is, and at all relevant times was, a  
10          resident of California and the President, Chief Executive Officer, and majority  
11          shareholder of MGA.

12           7. Counterdefendant National Union is, and at all relevant times was, a  
13 Pennsylvania corporation with a principal place of business located in New York,  
14 New York.

15           8. Counterdefendant Chartis is an Illinois corporation that maintains its  
16 principal place of business in New York, New York.

17           9. Counterdefendant Lexington is a Massachusetts corporation with its  
18 principal place of business in Boston, Massachusetts.

19           10. Counterdefendant C&F is an Arizona corporation that maintains its  
20 principal place of business in Morristown, New Jersey.

IV.

## **THE INSURANCE POLICIES**

23           11. Lexington issued to MGA Commercial General Liability Policies,  
24 Policy No. 0308552 and Policy no. 0350122, for the periods January 1, 2006 to  
25 January 1, 2007 and January 1, 2007 to January 1, 2008, respectively. The  
26 Lexington Policies are attached as Exhibits A and B to Plaintiffs' complaint.

1           12. National Union issued to MGA Commercial Umbrella Liability  
2 Policy, Policy No. BE 740-82-85, for the period January 1, 2001 to January 1,  
3 2002. The National Union Policy is attached as Exhibits C to Plaintiffs' complaint.

4           13. Chartis issued to ABC a Commercial Umbrella Liability Policy,  
5       Policy No. BE 7413666, for the period January 1, 2002 to January 1, 2003. The  
6       Chartis Policies is attached as Exhibits D to Plaintiffs' complaint. The Lexington,  
7       National Union, and Chartis Policies are collectively referred to as "The Member  
8       Companies' Policies."

9           14. C&F issued to MGA Commercial General Liability Policies, Policy  
10          Nos. GLO 0000222, GLO 011079, GLO 0500151, for the periods January 1, 2003  
11          to January 1, 2004, January 1, 2004 to January 1, 2005, and January 1, 2005 to  
12          January 1, 2006, respectively. The C&F Policies are attached as Exhibits E, F, and  
13          G, respectively, to Plaintiffs' complaint.

14           15. The Member Companies' Policies and the C&F Policies each carried  
15 an implied covenant of good faith and fair dealing.

V.

## **THE PLAINTIFFS' WRONGFUL CONDUCT**

16. Mattel Inc. (“Mattel”) brought suit against MGA in the *Mattel*  
Litigation, and MGA tendered the lawsuit to Plaintiffs in response.

20           17. In respect to MGA's tenders, the Plaintiffs unreasonably refused to  
21 defend MGA forcing MGA to file suit against the Plaintiffs to obtain benefits  
22 under the Plaintiffs' Policies.

23           18. The court ruled on Summary Judgment Motions that MGA was  
24 entitled to a defense in the *Mattel* Litigation.

25           19. The Plaintiffs breached their duties to MGA by failing to promptly  
26 accept MGA's tenders of defense. Moreover, the Plaintiffs unreasonably required  
27 MGA to litigate with the Plaintiffs over its rights, and their duties, under the  
28 Plaintiffs' Policies.

1        20. MGA has yet to be made whole in the *Mattel* Litigation or receive any  
2 award from Mattel, and yet the Plaintiffs are attempting to deprive MGA of its  
3 ability to be made whole in their complaint by seeking reimbursement before any  
4 award is affirmed.

5        21. The Plaintiffs conduct toward MGA breached the implied covenant of  
6 good faith and fair dealing and was inequitable. Accordingly, the Plaintiffs are not  
7 entitled to the equitable relief sought in this matter.

8           22. The Plaintiffs' have now unreasonably sought reimbursement, which  
9 is, at a minimum, premature since MGA's claims against Mattel are still on appeal  
10 and not final.

11           23. MGA has not yet received any financial benefit of the trial court  
12 award in its favor, and it remains to be seen whether it will receive any sums for  
13 which reimbursement could be claimed by Plaintiffs. Accordingly, it is impossible  
14 for the Court to fashion a declaration of the rights as between the parties through  
15 this action.

16           24. Plaintiffs' attempt to seek reimbursement in this action is  
17 unreasonable and is a breach of the implied covenant of good faith and fair dealing.

18           25. Plaintiffs' unreasonable conduct has forced MGA to retain attorneys  
19 to defend against these allegations.

20           26. Plaintiffs' unreasonable conduct has also damaged MGA's business in  
21       the form of consequential economic damages.

22           27. Plaintiffs' unreasonable conduct has also damaged Isaac Larian in the  
23 form of emotional distress.

## **FIRST CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**  
**(Against All Counterdefendants)**

27           28. Counterclaimants allege and incorporate by reference each and every  
28 preceding paragraph in support of this claim for relief.

1           29. Plaintiffs have breached their duty of good faith and fair dealing owed  
2 to Counterclaimants in filing this declaratory relief action when Plaintiffs were  
3 aware that the issues being asserted were premature, thus causing  
4 Counterclaimants substantial prejudice. Plaintiffs' conduct unreasonably failed to  
5 give at least as much consideration to the interests of its insured as it gave its own  
6 interests and unreasonably put their interests before the interests of their insured.

7           30. As a further proximate result of the unreasonable and bad-faith  
8 conduct of Plaintiffs, Counterclaimants were compelled to retain legal counsel to  
9 obtain the benefits due under the policy. Therefore, Plaintiffs are liable to  
10 Counterclaimants for those attorney's fees reasonably necessary, and incurred  
11 and/or paid by Counterclaimants in order to obtain benefits under the policies in a  
12 sum to be determined at the time of trial.

13           31. Plaintiffs acted in a conscious disregard of Counterclaimants' rights  
14 and interests. Plaintiffs acted willfully to deprive MGA of policy benefits in favor  
15 of their own financial interests. Plaintiffs' conduct constitutes (1) malice, (2)  
16 oppression, or (3) fraud within the meaning of California Civil Code § 3294.  
17 Accordingly, MGA seeks an award of punitive damages in an amount appropriate  
18 to punish past conduct and deter Plaintiffs from continuing said conduct.

19           32. Plaintiffs' conduct described herein was undertaken by the corporate  
20 officers or managing agents of Plaintiffs, who were responsible for claims  
21 supervision and operations, underwriting, communications and/or decisions. The  
22 aforementioned conduct of said managing agents and individuals was therefore  
23 undertaken on behalf of the corporate Plaintiffs. Said corporate Plaintiffs further  
24 had advance knowledge of the actions and conduct of said individuals whose  
25 actions and conduct were ratified, authorized and approved by managing agents.

26           33. Plaintiffs' unreasonable and bad-faith conduct is the legal cause of the  
27 substantial harm and damage Counterclaimants suffered, including general and  
28 special damages, interest, and other economic and consequential damages.

1           34. Plaintiffs' unreasonable and bad-faith conduct is the legal cause Isaac  
2 Larian's substantial and severe emotional distress.

3

4           **SECOND CLAIM FOR RELIEF**

5           **(Declaratory Judgment)**

6           **(Against All Counterdefendants)**

7           35. Counterclaimants allege and incorporate by reference each and every  
8 preceding paragraph in support of this claim for relief.

9           36. A present and actual controversy between Counterclaimant and  
10 Counterdefendants exists in that Counterdefendants' seek a determination that they  
11 are entitled to reimbursement from the Mattel Award whereas Counterclaimants  
12 contends that Counterdefendants are not entitled to the requested reimbursement.

13           37. Counterclaimant requests a declaration from this Court that  
14 Counterdefendants are not and may not obtain reimbursement for the fees and  
15 costs paid in connection with the representation of MGA in the *Mattel* Litigation  
16 from MGA's recovery of such attorneys' fees and costs as the District Court has  
17 ordered or will hereafter order be paid by Mattel.

18           **DEMAND FOR JURY TRIAL**

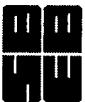
19           38. Counterclaimants hereby demand a jury trial on their counterclaims  
20 against Plaintiffs.

21           **PRAYER FOR RELIEF**

22           WHEREFORE, Counterclaimants pray for judgment against Plaintiffs  
23 as follows:

- 24           1. For economic damages proximately caused by Plaintiffs' conduct;  
25           2. For reasonable attorneys' attorney fees, witness fees, and costs of  
26 litigation incurred and/or paid by MGA to obtain the policy benefits in  
27 an amount to be determined at trial;

28



3. Punitive and exemplary damages in an amount appropriate to punish or set an example of Plaintiffs;
4. For Isaac Larian, damages for emotional distress;
5. For costs of suit;
6. For a declaration of rights and obligations of the parties under the insurance policy in question; and
7. For such other and further relief as the Court deems just and proper.

Date: August 8, 2012

**SHERNOFF BIDART  
ECHEVERRIA BENTLEY LLP**

By

---

~~MICHAEL J. BIDART~~  
RICARDO ECHEVERRIA  
Attorneys for Defendants and  
Counterclaimants, MGA  
ENTERTAINMENT, INC. and ISAAC  
LARIAN

**SHERNOFF BIDART  
ECHEVERRIA BENTLEY**  
LAWYERS FOR INSURANCE POLICYHOLDERS

MGA adv. National Union Fire, et al.  
Case No.: CV 12-0943 DOC

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

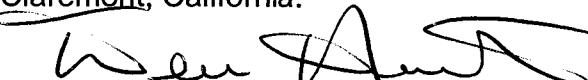
On **August 8, 2012**, I served the foregoing documents described as DEFENDANTS', MGA ENTERTAINMENT, INC. AND ISAAC LARIAN, ANSWER AND COUNTERCLAIM on the interested parties in this action by placing    the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

[XX] BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- ELECTRONIC MAIL SERVICE Pursuant to an Order of the District Court.
  - BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.
  - BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.
  - BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.
  - (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- [XX] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **August 8, 2012**, at Claremont, California.



DEBBIE HUNTER

MGA adv. National Union Fire, et al.  
Case No.: CV 12-0943 DOC

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